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FORM**

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Total Number of Pages in This Submission

|                        |                    |
|------------------------|--------------------|
| Application Number     | 10/650,494         |
| Filing Date            | August 28, 2003    |
| First Named Inventor   | Bradley T. Estes   |
| Art Unit               | 3733               |
| Examiner Name          | Annette R. Reimers |
| Attorney Docket Number | MSDI-479/PC457.06  |

**ENCLOSURES (Check all that apply)**

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| <input type="checkbox"/> Fee Transmittal Form<br><input type="checkbox"/> Fee Attached<br><input checked="" type="checkbox"/> Amendment/Reply<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request<br><input type="checkbox"/> Express Abandonment Request<br><input type="checkbox"/> Information Disclosure Statement<br><br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Reply to Missing Parts/<br>Incomplete Application<br><input type="checkbox"/> Reply to Missing Parts<br>under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert to a<br>Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation<br>Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) _____<br><input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC<br><input type="checkbox"/> Appeal Communication to Board<br>of Appeals and Interferences<br><input type="checkbox"/> Appeal Communication to TC<br>(Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please identify<br>below):<br>Return Receipt Postcard |
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Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

|              |                   |          |        |
|--------------|-------------------|----------|--------|
| Firm Name    | Krieg DeVault LLP |          |        |
| Signature    |                   |          |        |
| Printed name | Brad A. Schepers  |          |        |
| Date         | December 12, 2006 | Reg. No. | 45,431 |

**CERTIFICATE OF TRANSMISSION/MAILING**

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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE


|                                   |   |                      |
|-----------------------------------|---|----------------------|
| In re patent application of:      | ) | Before the Examiner: |
| Estes et al.                      | ) | Annette R. Reimers   |
|                                   | ) |                      |
| Application Serial No. 10/650,494 | ) | Group Art Unit 3733  |
|                                   | ) |                      |
| Filed August 28, 2003             | ) | Ref. No. MSDI-479/   |
|                                   | ) | PC457.06             |
|                                   | ) |                      |
| LATERALLY EXPANDING               | ) | December 12, 2006    |
| INTERVERTEBRAL FUSION DEVICE      | ) |                      |

## RESPONSE TO NON-FINAL OFFICE ACTION

Commissioner for Patents  
P.O. Box 1450  
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Sir:

In response to the non-final Office Action dated September 13, 2006, please enter and consider the following remarks. Additionally, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 12-2424, but not to include any payment of issue fees.

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| Date of Signature   |       |

## **INTRODUCTORY COMMENTS**

Claims 2-4, 15 and 28-103 are pending in the subject application. Claims 4, 32-34, 47-49, 51-56, 65, 66, 77, 78 and 89-103 have been withdrawn from consideration. The remaining claims currently stand rejected. In view of the following amendments and remarks, reconsideration and allowance of the subject application are hereby requested.